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11
12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF WASHINGTON
14 SPOKANE DIVISION
15

16 LONNIE TOFSRUD, an individual,
17 Plaintiff,

18 vs.

19 CITY OF SPOKANE, a municipal
20 corporation in the State of Washington,
21 CRAIG MEIDL, in his personal and
22 official capacity, JUSTIN LUNDGREN,
23 in his personal and official capacity, and
24 DAVE STABEN, in his personal and
25 official capacity,

26 Defendants.

Case No. 2:19-cv-00371-RMP

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

Violations of 42 U.S.C. § 1983, 14th
Amendment Due Process, Equal
Protection, 1st Amendment Retaliation,
Outrage, and Defamation

42 U.S.C. § 1983, supplemental state
common law claims

Damages at least \$2,000,000 or an
amount to be proven at trial

DEMAND FOR JURY TRIAL

1 **AMENDED COMPLAINT**

2 Plaintiff Lonnie Tofsrud ("Plaintiff"), by and through his attorneys, Thenell
3 Law Group, P.C., brings this Complaint herein and states and alleges as follows:
4

5 **INTRODUCTORY STATEMENT**

- 6 1. This action is filed by Plaintiff under 42 USC § 1983 and it seeks monetary
7 damages and injunctive relief for violations of the Plaintiff's Fourteenth
8 Amendment due process and equal protection, unlawful retaliation for First
9 Amendment free speech, and state law claims of outrage, and defamation by
10 Defendants City of Spokane, Chief Craig Meidl, Assistant-Chief Justin Lundgren,
11 and Lieutenant Dave Staben.
12
13 2. Defendants, except as noted herein, at all times material were acting in their
14 official capacities. Defendants, acting under color of law, have deprived Plaintiff
15 of due process and equal protection of law, retaliation for exercise of free speech,
16 and injured Plaintiff under state law by retaliating against Plaintiff's exercise of
17 free speech on a matter of public concern, by depriving Plaintiff of property
18 interests without due process, by treating Plaintiff differently than similarly
19 situated persons without rational basis, by defaming Plaintiff and committing
20 outrage upon him and by conspiring with each other in furtherance of the above
21 violations.
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JURISDICTION AND VENUE

3. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, federal question jurisdiction, 28 U.S.C. § 1343, civil rights jurisdiction, for violations of the Constitution, as actionable under 42 U.S.C. § 1983. Specifically, Plaintiff alleges that Defendants have violated and continues to violate his rights to procedural due process and equal protection under the Fourteenth Amendment to the United States Constitution and his liberty and association interests under the First Amendment.
4. Venue is proper under 28 U.S.C. § 1391(b), as Defendants reside in the Eastern District of Washington and Plaintiff's claims for relief arose in this district.

PARTIES

5. Plaintiff is a resident of Spokane County, Washington, and is employed by the Spokane Police Department ("SPD"), a department within the City of Spokane (the "City").
6. The City is a municipal corporation liable for the tortious conduct of its agents and employees pursuant to RCW 4.96.020. The City is sued for damages. The SPD is a department within the City and is responsible at all times for the acts and omissions of the SPD and its employees and agents. All references herein to the SPD shall be taken as references to the City where applicable.

1 7. Craig Meidl (“Meidl” or “Chief Meidl”) is the Chief of Police for the SPD.

2 Defendant Meidl represents SPD in his capacity as its Chief. Defendant Meidl is
3 the final policy maker for SPD with regard to all matters related to the Plaintiff’s
4 employment. Defendant Meidl is sued herein in his official capacity and as an
5 individual.
6

7
8 8. Justin Lundgren (“Lundgren” or “Assistant Chief Lundgren”) is the Assistant
9 Chief of Police for the SPD. Defendant Lundgren is sued herein in his official
10 capacity and as an individual.
11

12 9. Dave Staben (“Staben”) is a Lieutenant in the SPD. Defendant Staben is sued
13 herein in his official capacity and as an individual.
14

15 **FACTUAL BACKGROUND**

16 10. Plaintiff has been a valued employee of the Spokane Police Department for the
17 past 28 years. Plaintiff was promoted to the rank of Detective in 1999. Plaintiff’s
18 abilities and work ethic are memorialized in performance reviews,
19 accommodations as well opinions submitted in the form of written and verbal
20 commendations. Plaintiff was assigned to the Targeted Crimes Unit (TCU) in
21 approximately 2003. Plaintiff left the TCU for approximately three years before
22 returning to the TCU in 2009 where he has worked until the events described
23 herein.
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1 11.The Major Crimes unit of the Spokane Police Department is charged with
2 investigating serious felonies including, but not limited to, homicides, serious
3 assaults, and robberies. The detectives assigned to this unit are also responsible
4 for the investigation of critical events involving police officers. This is a coveted
5 position within the investigative division and offers many incentives including,
6 but not limited to, training, overtime opportunities, and equipment. Plaintiff was
7 actively recruited to join Major Crimes prior to the events described herein. Once
8 the Defendants initiated the retaliatory investigations into the Plaintiff, as
9 described herein, the Plaintiff was no longer considered for any of the several open
10 positions in the Major Crimes unit.
11

12 12.The Targeted Crimes Unit has had a longstanding working relationship with the
13 ATF. The two entities have engaged in several joint criminal investigations both
14 in the state and federal arena. Plaintiff has been identified as the informal leader
15 of TCU as well as an informal task force officer. There has been a memo of
16 understanding wherein the ATF would reimburse the SPD for overtime incurred
17 by detectives working with the ATF. This relationship was also memorialized in
18 an email from Staben. Plaintiff had been the lead investigator in a vast majority
19 of the joint investigations with the ATF.
20

21 13.In 2016 Plaintiff and ATF Special Agent Julius began utilizing a specific
22

23 confidential informant (the CI) to facilitate criminal investigations related to the
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25 (WAED Case No. 2:19-cv-00371-RMP) 2018-139

1 trafficking of firearms and narcotics. The two initiated several investigations that
2 led to the arrest and convictions of many people involved in criminal activity in
3 and around the greater Spokane area. Subjects were often career offenders with
4 criminal histories including violent offenses. The obvious primary effect of the
5 investigations was the eventual incarceration of people involved in a wide array
6 of criminal law violations, not just the firearms violations. A secondary effect
7 was the disruption of criminal groups.
8

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10 14. Joint efforts between TCU and ATF were designed to disrupt and address the flow
11 of firearms into the hands of career offenders. Cases decided by the Supreme
12 Court, including *Arizona v Gant* (2009), limited the ability for patrol officers to
13 search vehicles incident to arrest. The TCU/ATF task force was utilizing CIs to
14 perform controlled buys to both facilitate seizure of the illegal firearms as well as
15 arrest the serial offenders responsible for the flow of weapons.
16

17
18 15. On November 6, 2017, SPD officers Corporal McCullough and Sergeant Vigessa
19 contacted and arrested Tofsrud's and Julius's CI. The CI was charged and was
20 being held in custody. Sergeant Vigessa contacted Plaintiff and made him aware
21 of the arrest. Plaintiff later reviewed the written arrest report and accompanying
22 documents. Plaintiff was familiar with the work of both McCullough and Vigessa
23 in past incidents and made certain to review the unit history and the official reports
24

25 filed by McCullough and Vigessa in this incident. Plaintiff noted discrepancies
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1 between the official report and the notes McCullough had entered in the unit
2 history or CAD.

3
4 16. On December 27, 2017, Plaintiff called McCullough, urging him to address the
5 discrepancies. Plaintiff was concerned that these discrepancies would cause
6 problems for the prosecutor's office due to *Brady* disclosure implications.
7 Specifically, the CAD or unit history is a discoverable document and any criminal
8 defense attorney would immediately note the facts and details present in the unit
9 history or CAD report which were absent or modified in the official police report
10 of the arrest. Plaintiff advised McCullough that he would be contacting the
11 prosecutor's office the following day for guidance. By contacting McCullough
12 directly, Plaintiff was attempting to address the matter at the lowest possible level
13 without escalation.
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17 17. On December 28, 2017, Plaintiff contacted Eugene Cruz, a prosecutor at the
18 Spokane County Prosecutor's Office. Plaintiff discussed the discrepancies in
19 McCullough's report and provided Cruz with the report and the CAD notes or unit
20 history notes. The document provided by Plaintiff came directly from
21 McCullough, were his authorship, or his unit history.
22
23

24 18. Cruz communicated Plaintiff's concerns to Jack Driscoll ("Driscoll"), the chief
25 criminal prosecutor at that time, and Mark Cipolla ("Cipolla"). The prosecutor's
26

office decided to dismiss the case against the CI arrested by McCullough and
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1 Vigessa. Driscoll also contacted Lieutenant Stevens who oversaw the SPD
2 internal affairs unit regarding possible misconduct by McCullough. It was the
3 policy of the SCPO to refer allegations of officer misconduct to the internal
4 investigations unit in the subject agency.
5

6 19. Instead of promptly opening an investigation into McCullough, Stevens contacted
7 Lt. Staben, who was McCullough's and Plaintiff's superior officer. Staben took
8 the case over from Stevens. Staben opened two internal affairs investigations, one
9 into Plaintiff ("Tofsrud IA") and a pretextual investigation into McCullough
10 ("McCullough IA"). Plaintiff believes the McCullough IA was pretextual because
11 of the numbers assigned to the two IAs. The policy pattern and practice of the
12 SPD is to number each IA when it is opened in a sequential fashion with a prefix
13 designating the year, e.g. yy-xxx. Here the IA number associated with the
14 McCullough IA was 18-003 while the IA number associated with the Tofsrud IA
15 was 18-002. Later both IAs were merged into 18-002 to obscure the fact that
16 Staben opened the first investigation into Tofsrud, who had reported potential
17 misconduct.
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22 20. The Assignment History associated with IA 18-002 notes Stevens assigned the
23 incident to Staben on January 15, 2018. Staben attached McCullough's unit
24 history and officer reports that same day. Also, on January 15, 2018, Staben added
25

26 Tofsrud to the IA as well as his Sergeant Preuniger, Plaintiff's sergeant, who was
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1 investigated for allowing Plaintiff to take his complaint to Cruz outside the chain
2 of command. McCullough was not added to IA 18-002 until February 8, 2018, on
3 or about the time McCullough's IA was merged into Tofsrud's. Staben initially
4 attempted to interview Plaintiff on January 16, 2018, telling him he was merely a
5 witness in an IA into McCullough. Staben refused to allow Plaintiff to bring a
6 legal representative with him, again telling him he was merely a witness. Staben
7 further told Plaintiff the interview must happen that day to accommodate the
8 attendance of the ombudsman, Bart Logue. Plaintiff was suspicious of this request
9 because it was the policy of the SPD to include the ombudsman only for
10 investigations which originated by citizen complaint, not internally. Plaintiff
11 declined to be interviewed on that day.

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16 21. Staben interviewed Detective James Erickson on January 16, 2018. Erickson
17 worked with Plaintiff in the TCU. Staben used deceptive interrogation techniques
18 to elicit a statement from Erickson that Plaintiff used the word "lie" or "lied" when
19 reporting the discrepancies to Cruz. This is contrary to the nature of the referral
20 Plaintiff made but became the basis for the allegations which Defendants
21 conspired to sustain against Plaintiff. Police Guild Vice President Kris Honacker
22 was present for Erickson's interview. Upon learning of the Erickson interview and
23 Staben's focus on Plaintiff, Plaintiff also elicited the support of the union and
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Honacker.

1 22.Plaintiff and Honacker met with Assistant Chief Lundgren. Plaintiff and Honacker
2 apprised Lundgren of the chain of events and Lundgren opined the investigation
3 should not have been opened by Staben at the shift level due to the obvious *Brady*
4 Implications. Lundgren relieved Staben of the investigation and it was transferred
5 back to Stevens on January 17, 2018; it was then assigned to Sergeant Michael
6 Carr and Sergeant Daniel Waters who handled the bulk of the investigation. It was
7 Carr who later informed Plaintiff that the two IAs had been merged into one.
8

9
10 23.Despite being relieved of the investigation, Staben continued to insert himself in
11 the investigation process. This interference continued throughout the entire
12 process of the investigation, analysis, ultimate finding and grievance to reconsider
13 the findings. Even if he did not engage in this improper interference, Staben had
14 already tainted the focus of the investigation by turning it towards the Plaintiff,
15 who reported the potential misconduct, and away from McCullough, the potential
16 malfeasant.
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20 24.Plaintiff also brought his concerns over the handling of the IAs and Staben
21 treatment of Plaintiff to the City's HR department. Plaintiff and Honacker had a
22 discussion with Jennifer Jackson of human resources. Jackson was given the same
23 information as Lundgren. She was also made aware of inappropriate behavior
24 exhibited by Lieutenant Staben.
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1 25. On March 22, 2018, Sergeant Carr interviewed Plaintiff. Plaintiff was read his
2 administrative rights, which included in part, that Plaintiff was being compelled
3 to answer questions truthfully and honestly. Plaintiff at all times answered
4 questions truthfully.
5

6 26. In May of 2018, an administrative review panel concluded that Plaintiff had
7 violated several policies. The most damning being SPD Policy 340.3.5 (f)
8 “Knowingly making false, misleading or malicious statements that are reasonably
9 calculated to harm or destroy the reputation, authority or official standing of the
10 Department or members thereof.” The statements alleged to be false were
11 Plaintiff’s allegation against McCullough and Vigessa. None of Plaintiff’s
12 allegations were proven false. McCullough’s report did in fact contain
13 inconsistencies and the other officers involved in the arrest did in fact make
14 statements which conflicted with the evidence. None of the statements Plaintiff
15 made prior to, or during the IA, were proven to be false.
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20 27. On June 22, 2018, Chief Meidl authored a letter of reprimand outlining the policy
21 violations committed by Plaintiff. The letter noted additional statements made by
22 Plaintiff. The letter was presented to Plaintiff by Major Eric Olson. During that
23 conversation, Olson indicated that he had requested a portion of the letter be
24 changed in an effort to lessen the chances that Plaintiff would be implicated by
25

26 the *Brady v Maryland* requirements of the prosecutor’s office.

1 28. On July 24, 2018, Plaintiff submitted a letter of rebuttal addressing the IA
2 investigation, the analysis, the eventual finding of the administrative review panel,
3 and the subsequent letter of reprimand. Plaintiff enlisted the assistance of his
4 attorney, Christian Phelps, in preparing that document. The document gave a clear
5 and concise explanation of the chain of events. Plaintiff had provided a list of
6 witnesses who could elucidate the matter further; none of those witnesses were
7 interviewed during the course of this investigation, nor were they interviewed
8 after the rebuttal. Plaintiff did not receive any response from the Chief's office
9 other than an email indicating that the letter had been received and then it would
10 be read.
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14 29. On September 21, 2018, the Spokane Police Guild president, John Griffin,
15 submitted a letter to Chief Meidl asking him to reconsider the letter of reprimand
16 as issued to Plaintiff. Griffin also met with members of the administrative review
17 panel and plead the case. The chief declined to reconsider the letter and its
18 language. This step exhausted Plaintiff's administrative options to address this
19 miscarriage of justice.
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21

22 30. Contemporaneously with the events described herein, Chief Meidl presented a
23 document to members of the Spokane Police Department. The document was
24 entitled "Highlights of the collaborative reform process in the Spokane Police
25 Department". Chief Meidl worked with community stakeholders on this
26

1 document, including a prominent citizen of color named James Wilbourn. Mr.
2 Wilbourn was quoted in the document as saying “In order to gain trust with the
3 community, the community wants to be sure that officers will report misconduct
4 by other officers. Failure of officers to hold their peers who engage in misconduct
5 accountable soils the reputation of all officers”. This was precisely the ethic that
6 Plaintiff attempted to adhere to by reporting the factual discrepancy in
7 McCullough’s report.
8
9

10 31. On August 29, 2018 Plaintiff was contacted by two of his peers who told him chief
11 criminal deputy Cipolla had been publicly stating that Plaintiff would be identified
12 as a *Brady* officer. On August 30, 2018, Plaintiff was contacted directly by
13 Cipolla, who requested a meeting. Honaker accompanied Plaintiff to Cipolla’s
14 office. Plaintiff was served with a potential impeachment disclosure (“PID”)
15 letter. During the conversation, Cipolla indicated that the letter was the sole result
16 of the finding by chief Meidl. Cipolla also indicated that he felt the investigation
17 was agenda driven and poorly executed. Cipolla had previously told Plaintiff and
18 other witnesses that a member of the Spokane Police Department administration
19 had contacted the prosecutor’s office in an effort to secure the decision to
20 designate Plaintiff as a *Brady* officer. Cipolla refused to elaborate on that issue in
21 front of Honaker. Plaintiff believes the SPD Defendants conspired to create a
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1 Brady issue related to Plaintiff. Plaintiff further believes Cipolla was aware of this
2 conspiracy and nevertheless issued the PID letter.

3
4 32. Plaintiff's attorney, Mr. Phelps, attempted to intervene with the elected
5 prosecutor, Larry Haskell. Phelps was unable to get Haskell to reverse his office's
6 decision to designate Plaintiff a Brady officer despite evidence the office had acted
7 in violation of their own written policy guidelines.
8

9 33. On May 4, 2018, Plaintiff filed a discrimination/harassment complaint with
10 Spokane City human resources. The complaint outlined specific behavior
11 demonstrated by Lieutenant Staben. During the pendency of the complaint being
12 investigated Plaintiff was warned by his chain of command about contacting
13 possible witnesses that could substantiate his allegations. Plaintiff is unaware of
14 any policy that prohibits a victim of discrimination/harassment from identifying
15 possible witnesses and having contact with them. Plaintiff believes this direction
16 is further evidence of retaliation and prevented many helpful witnesses from
17 coming forward on Plaintiff's behalf.
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21 34. Plaintiff was advised the human resources complaint would not be investigated
22 until after the IA had been completed. Plaintiff was told this would help protect
23 the integrity of the IA. Plaintiff has cause to believe the investigations were not
24 kept separate and were used to accomplish the same unlawful purpose, that being
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26

1 to punish Plaintiff for his reporting of potential misconduct while protecting the
2 City, the SPD and the individual defendants.

3
4 35. During the pendency of the HR complaint, Lieutenant Staben made contact with
5 a subordinate (Tom Michaud) and discussed the complaint with him. Michaud
6 was so concerned about this discussion that he reported it to human resources.

7
8 36. Carr confronted Plaintiff during Plaintiff's shift regarding the HR complaint. Carr
9 also admitted to other violations of IA policy by disclosing details of the
10 investigation to others. Carr and Staben were familiar with IA policies and knew
11 or should have known their actions violated those policies. Following this
12 confrontation with Carr, Plaintiff became concerned and contacted Jennifer
13 Jackson and Christine Kavanaugh of human resources to ask for specific
14 protections.
15
16

17 37. On November 20, 2018, Jennifer Jackson submitted a final report regarding the
18 human resources complaint initiated by Plaintiff. The report was lacking crucial
19 information and appeared to be a complaint and investigation of Plaintiff. The
20 report contained witness statements solicited by Jackson and Jacqui MacConnell
21 director of SPD internal affairs. The witnesses appear to have been curated to
22 protect Chief Meidl, Lt. Staben, and other members of the SPD executive staff.
23
24 The report did not include any witness interviews with Plaintiff's peers or
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coworkers. Plaintiff and his attorneys submitted a response to the report pointing
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1 out the obvious inadequacies of the investigation and those conducting it. There
2 have been no attempts to rectify the clear mistakes made by the investigators.

3
4 38. The City's HR department eventually issued a report that largely found in favor
5 of Staben and against Plaintiff. The report did find Staben lacked in emotional
6 intelligence and recommended training on emotional maturity. Plaintiff has reason
7 to believe that Staben was never required to undergo any training as a result of the
8 HR findings.

9
10 39. Despite the fact that it was the malfeasance of McCullough and the SPD senior
11 staff that led to Plaintiff's report, Cpl. McCullough has been identified as a
12 "victim" of the Plaintiff in a memo from Staben. The evidence clearly showed
13 McCullough had sufficient discrepancies in his report to warrant a PID letter;
14 however, it was Plaintiff who was issued the PID letter in response to his reports
15 of the misconduct and removed from his position. McCullough, although also
16 issued a PID letter, has been allowed to continue working specialty positions that
17 provide augmented work hours, overtime opportunities and career advancement.
18 Despite Plaintiff's allegations and the findings of the HR report, Staben continues
19 to operate in a supervisory role with no negative repercussions. Plaintiff has been
20 assigned to a precinct with limited/restricted duties and virtually no opportunities
21 for overtime. Plaintiff has been foreclosed from nearly every opportunity for

22 career advancement. Plaintiff has also been prevented from working with the
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1 ATF. Plaintiff is being treated unequally from McCullough with no rational basis
2 to support the difference.
3

4 40. The mishandling of the internal investigations and the human resources
5 investigation, the persistent interference by Staben and others, and the unequal
6 treatment of Plaintiff have all caused extreme stress and destroyed an otherwise
7 good working relationship between Plaintiff and many, if not all, of his former
8 coworkers. The retaliatory interference by the police administration in the HR
9 investigation and with the prosecutor's office have caused Plaintiff to be denied
10 opportunities for advancement and all of the above have contributed to Plaintiff's
11 health issues. These stressors as well as unrelated health problems resulted in
12 Plaintiff taking a medical leave for approximately eleven months.
13
14

15 41. After returning from leave, Plaintiff was transferred to the North Precinct and was
16 told that his duties would include screening cases, distributing stickers for the scat
17 program and conducting background investigations for perspective senior
18 volunteers at the precinct. Plaintiff was also assigned an office in the reception
19 area of the precinct. The office was located in area where DOC offenders would
20 report to their probation officers. The office was previously occupied by a patrol
21 officer that had been identified as a Brady officer. That officer had retired just
22 prior to Plaintiff returning to duty. The office was across a narrow hallway from
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a room where the DOC offenders would supply urine samples. This placement
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1 was clearly retaliatory. After discussion with his Sergeant and Lieutenant, it was
 2 decided that Plaintiff would share an office with his former partner, Detective
 3 Thieschafer.
 4

5 42. On August 14, 2019, Plaintiff was directed to report to the Academy for remedial
 6 training. There had been an email between Captain Griffiths and Lieutenant
 7 McNabb outlining a policy that stated when an employee is gone on leave for
 8 more than 6 months, that employee must report to the Academy for training. The
 9 training is supposed to be designed to specifically address the employee's new
 10 duty assignment. The training given to Plaintiff was limited to qualifying on a
 11 PPC course with a handgun and reading policy. The training had no relative
 12 connection to Plaintiff's new assignment.
 13
 14

15 CLAIMS FOR RELIEF

16 FIRST CLAIM FOR RELIEF

17 42 USC § 1983 – Fourteenth Amendment

18 Count One: Violation of Plaintiff's Procedural

19 and Substantive Due Process Rights

20 (All Defendants)

21 43. Plaintiff re-alleges all paragraphs previously alleged.
 22

23 44. By and through the actions and omissions described above, Defendants deprived,
 24

25 and conspired with one another to deprive Plaintiff of his Fourteenth Amendment
 26 Page 18 – FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
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1 rights preventing deprivation of his constitutionally protected rights without due
2 process of law, causing him harm.

3
4 45.Except as otherwise alleged herein, all Defendants acted under color of law at all
5 times material.

6 46.Plaintiff has a property interest in his job, as he has a legitimate entitlement to
7 continued employment with his public employer, as well as fair and equal access
8 to overtime and promotional and training opportunities. This claim to entitlement
9 arises out of the SPD's promises of specific treatment in specific circumstances,
10 including disciplinary action implemented upon existence of just cause, made in
11 City and Department disciplinary policies, the *Brady* best practice policy and the
12 collective bargaining agreement.

13
14
15 47.Defendants failed to provide adequate notice and opportunity to be heard
16 regarding his termination and his *Brady* listing. The listing effectively blacklisted
17 Plaintiff and continues to affect him to this day. The investigation against Plaintiff
18 was so flawed that it deprived him of due process.

19
20
21 48.Defendants then deprived Plaintiff of his constitutionally protected interests
22 without due process of law when they forced him out of the TCU, deprived him
23 of overtime pay (an "economic sanction"), drastically changed his work duties
24 and shift assignments, curtailing or eliminating training opportunities, and

25 effectively ended his employability as a police officer and his ability to transfer
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1 laterally to a different department, thereby directly impacting his interest in
2 pursuing law enforcement as a profession elsewhere. Defendants continue to
3 deprive Plaintiff of these interests without due process to this day.
4

5 49.As a direct and proximate result of the acts and omissions of Defendants
6 complained of herein, Plaintiff has suffered, and continues to suffer, economic
7 damages including lost overtime work, lost training and promotion opportunities,
8 advancement, and disqualification from testifying in the course of his
9 employment. Such injuries are permanent and continuing, and capable of being
10 determined at trial.
11
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13 50.As a further direct and proximate result of the acts and omissions complained of
14 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,
15 humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal
16 and professional reputation, entitling him to an award of compensatory non-
17 economic damages in an amount to be determined at trial.
18

19 51.Plaintiff seeks injunctive and declaratory relief in the form of an order that he be
20 immediately reinstated in his prior position with full pay and that he be
21 immediately removed from the *Brady* list. Plaintiff also seeks compensatory
22 damages against Defendants including any unpaid back-pay, overtime pay, as well
23 as compensatory damages for pain and suffering including mental anguish, loss
24 of self-esteem, dignity and standing in the community.
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1 52.Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is
2 entitled to attorney fees, expert witness costs, litigation costs, and prejudgment
3 interest.
4

5 **Count Two: Violation of Plaintiff's Right to Equal Protection**

6 **(All Defendants)**

7
8 53.Plaintiff re-alleges all paragraphs previously alleged.

9 54.SPD has a policy prohibiting untruthfulness in the performance of official duties.

10 Plaintiff was investigated and wrongfully punished for an alleged violation of this
11 policy. The basis for this punishment was the investigation and report completed
12 by the SPD and ratified by Lundgren and Meidl.
13

14 55.McCullough's inaccurate report was not fully investigated, but Plaintiff has cause
15 to believe the report and CAD unit history taken together, constitute dishonesty
16 under the SPD policy. Furthermore, Plaintiff has reason to believe McCullough
17 was dishonest in his statements during the investigation. Finally, Plaintiff has
18 reason to believe if the investigation into McCullough were properly carried out,
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McCullough would have been found to have been dishonest.

56.On information and belief, McCullough has not been investigated or punished for
his dishonesty. McCullough has not been subject to any employer discipline, nor
has he been reported to SCPO for untruthfulness, nor has he been included on the

Brady list of dishonest law enforcement officers.

1 57.Plaintiff was subjected to unequal treatment to McCullough without rational basis.

2 58.The Defendants actions violated the Equal Protection Clause of the Fourteenth
3 Amendment.
4

5 59.As a further direct and proximate result of the acts and omissions complained of
6 herein, Plaintiff has suffered, and continues to suffer, mental pain and suffering,
7 humiliation, worry, anxiety, fear, loss of earning capacity, and loss of personal
8 and professional reputation, entitling him to an award of compensatory non-
9 economic damages in an amount to be determined at trial.
10

11 60.Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is
12 entitled to attorney fees, expert witness costs, litigation costs, and prejudgment
13 interest.
14

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16 **SECOND CLAIM FOR RELIEF**

17 **42 USC § 1983 – First Amendment**

18 **Violation of Right to Free Speech – Public Employee**

19
20 **(All Defendants)**

21 61.Plaintiff re-alleges all paragraphs previously alleged.

22 62.Plaintiff's referral of McCullough's potential misconduct was protected under the
23 1st and 14th Amendments to the Constitution.
24

25 63.Police misconduct, particularly dishonesty, is a matter of public concern.

26 64.Plaintiff's acts described herein were the sole motivating factors for one or more
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1 of the following retaliatory actions: the referral of Plaintiff to IA for investigation,
2 the Defendants making Plaintiff the center of the IA investigations, the merging
3 of the IA investigations, the referral to the SCPO for impeachment disclosure, the
4 removal of work assignments and opportunities, the manner in which the IA was
5 conducted, the manner in which the HR investigation was conducted, the selective
6 nature of the witnesses called for both the IA and the HR investigations, the
7 imposition of discipline on Plaintiff, the inclusion of Plaintiff on the *Brady* list,
8 the refusal to adjust the discipline by the SPD, and the refusal to remove Plaintiff
9 from the PID.
10
11
12

13 65. Except as otherwise noted herein all Defendants were acting under color of law
14 and in their official capacities at all times material.
15

16 66. There was no independent justification for the retaliatory acts taken by Defendants
17 against Plaintiff.
18

19 67. As a result of the above-described actions, Plaintiff has suffered damages totaling
20 at least \$2 million, including lost wages and benefits, lost economic potential,
21 harm to reputation, emotional distress, and incurrence of attorney fees and other
22 costs.
23

24 68. Plaintiff has incurred attorney's fee and costs in pursuing this claim.
25
26

THIRD CLAIM FOR RELIEF

Outrage

(All Defendants)

69. Plaintiff re-alleges all paragraphs previously alleged.

70. The Defendants' actions alleged herein were extreme and outrageous conduct.

71. The Defendants acted intentionally or recklessly in a manner that caused Plaintiff severe emotional distress.

72. The Defendants' acts of investigating and labeling a law enforcement officer as a liar, despite clear evidence collectively consists of an extraordinary transgression of the bounds of socially tolerable conduct that is extreme and outrageous. The application of the label "liar" in an ordinary social context is severely damaging to any private member of the community. To so label, publicly, a law enforcement officer is outrageous in the extreme. Law enforcement officers are expected to perform a highly dangerous and stressful job and are held to high standards of honesty. All the credible evidence here would indicate that Plaintiff met or exceeded that high standard. The application of the label "liar" and the continued and intentional refusal to remedy the situation, has caused severe mental and emotional anguish.

73. Plaintiff seeks injunctive and declaratory relief in the form of an order that he be

immediately removed from the *Brady* list. Plaintiff further seeks an order that the
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Defendants shall contact all parties in receipt of information regarding his inclusion on the *Brady* list and inform them that he was never to have been included in the first place. Plaintiff also seeks compensatory damages in an amount to be proven at trial for the infliction of severe mental and emotional trauma. Plaintiff further prays for an order awarding punitive damages due to the particularly aggravated disregard of the Plaintiff's rights.

FOURTH CLAIM FOR RELIEF

Defamation

(All Defendants)

74. Plaintiff re-alleges all previously alleged paragraphs.

75. Defendants made statements in the form of the IA investigation, memos and reports, letters, emails, and public comments in which they labeled Plaintiff as untruthful.

76. These statements were untrue, defamatory, intended to subject Plaintiff to ridicule, and diminish the respect and confidence in which Plaintiff is held by his employer, the City, and the public. These statements have the potential to cause damage to Plaintiff's profession up to, and including, termination and revocation of his law enforcement certification.

77. Moreover, Plaintiff's inclusion on the *Brady* list means that the false statement

labeling him as untruthful has been published to every defense attorney who had
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1 a case in the county involving Plaintiff. This has already caused Plaintiff to be
2 named as a defendant in one tort claim filed with the City and County of Spokane.

3
4 78. Defendants knew the statements were false and acted maliciously or recklessly,
5 or in bad faith.

6 79. Defendants' statements were defamatory *per se*. As a direct and proximate result
7 of Defendant's defamatory statements, Plaintiff has suffered economic and non-
8 economic damages.
9

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiff requests judgment in favor of Plaintiff and against
12 Defendants, as follows:
13

- 14 1. On each and every one of Plaintiff's claims against Defendants, for economic
15 damages in a sum to be determined at the time of trial;
16
17 2. On each and every one of Plaintiff's claims against Defendants, for non-
18 economic damages in a sum to be determined at the time of trial;
19
20 3. A judicial declaration that Defendants' actions violated Plaintiff's
21 constitutional rights, as alleged above;
22
23 4. A mandatory injunction ordering Defendants to remove Plaintiff from the
24 *Brady* List, taking such steps as are reasonably necessary to remedy the
25 ongoing economic harm;
26

- 1 5. A mandatory injunction ordering Defendants to reinstate Plaintiff in his
- 2 position prior to discipline;
- 3
- 4 6. An award of attorney's fees and costs pursuant to 42 U.S.C. § 1988 and other
- 5 applicable law;
- 6
- 7 7. An award of pre-judgment interest on all liquidated amounts awarded;
- 8
- 9 8. An award of post-judgment interest from the date of judgment to the date of
- 10 payment of that judgment amount;
- 11
- 12 9. A post-trial award of an amount sufficient to offset any adverse tax
- 13 consequences resulting from payment of the judgment;
- 14
- 15 10. Punitive damages for the aggravated defamation and outrageous conduct
- 16 causing severe emotional distress; and
- 17
- 18 11. Any other legal or equitable relief this court deems just and proper.

19 DATED this 31st day of January 2020.

20 THENELL LAW GROUP, P.C.

21 By: /s/ Daniel E. Thenell
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23 E-mail: dan@thenelllawgroup.com
24 Emerson Lenon, OSB 123728
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26 Telephone: (503) 372-6450
Of Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2020, I electronically filed the foregoing FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

Thomas W. McLane, WSBA #1226
Email: twm@twmclanelaw.com

Attorneys for Defendants

SENT VIA:

- ☐ U.S. Postal Service, ordinary first-class mail
- ☐ U.S. Postal Service, certified or registered mail, return receipt requested
- ☐ Hand Delivery
- ☐ Facsimile
- ☐ Electronic Service
- ☒ Email
- ☐ Other (specify) _____

THENELL LAW GROUP, P.C.

By: 
Anne M. Puppo, Legal Assistant